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No. 194 MISC.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT HUBBARD and LAVINIA HUBBARD, His Wife,
Movants,

versus

HENRY L. BROOKS, U. S. District Judge for Western District of Kentucky, Federal Building, Louisville (1), Kentucky,
Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS.

TO HONORABLE SUPREME COURT OF THE UNITED STATES.

ROBERT HUBBARD,
LAVINIA HUBBARD,
Movants.

IN THE

Supreme Court of the United States

ROBERT HUBBARD, and
LAVINIA HUBBARD, his wife, - - - *Petitioners,*

v.

HON. HENRY L. BROOKS, United States District Judge for the Western District of Kentucky, - - - - *Respondent.*

AUTHORITIES ON MOTION.

	PAGE
28 USC, Section 1654, page 4211, 1952 Edition.....	2
Rule 31 (1) and (3) Supreme Court.....	2
USC, Section 1651 (a), page 4210, 1952 Edition.....	2
28 USC, Section 2282, page 4410, 1952 Edition.....	2
USC, Section 2284, page 4411, 1952 Edition.....	3
Fifth Amendment to the Constitution of the United States	3
Metropolitan Water Company of West Va., Petitioner 220 U. S. 539, 31 S. Ct. 600, 55 L. Ed. 575.....	4
Mosher v. City of Phoenix, 287 U. S. 529, 53 S. Ct. 67 77 L. Ed. 148.....	4
Ex Parte Cogdell, et al., 342 U. S. 163, 72 S. Ct. 196, 96 L. Ed. 181.....	4
28 USC, Section 1253, page 4181, 1952 Edition.....	4

IN THE

Supreme Court of the United States

Term 1957, No.

ROBERT HUBBARD and
LAVINIA HUBBARD, His Wife,
Movants,

v.

HENRY L. BROOKS,
U. S. District Judge for
Western District of
Kentucky,
Federal Building,
Louisville 1, Kentucky,
Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS.

TO HONORABLE SUPREME COURT OF THE UNITED STATES.

Come Robert Hubbard and Lavinia Hubbard, his wife, in person,

> "APPEARANCE PERSONAL OR BY COUNSEL. In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." (28 USC, Section 1654, Page 4211, 1952 Edition.)

and under

> "1. The petition in any proceeding seeking the issuance of a writ by this court authorized by

> 28 U.S.C. § 1651(a) or 28 U.S.C. § 2241 shall be prefaced by a motion for leave to file such petition * * *." (Rule 31 (1) and (3) of the Supreme Court.)

and respectfully move the Court for leave to file a Petition for a Writ of Mandamus under

> "WRITS. (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of law." (USC Section 1651 (a), Page 4210, 1952 Edition.)

against Honorable Henry L. Brooks, Respondent, U. S. District Judge for the Western District of Kentucky, and to direct and order said Respondent to revoke his Orders of July 3 and July 22, 1957 (certified copies of which Orders are appended to their Petition) and to convene a three-judge Court,

> "INJUNCTION AGAINST ENFORCEMENT OF FEDERAL STATUTE: THREE-JUDGE COURT REQUIRED.
>
> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any District Court or judge thereof unless the application thereof is heard and determined by a district court of three judges under Section 2284 of this title." (28 USC Section 2282, Page 4410—1952 Edition.)

and

"THREE-JUDGE DISTRICT COURT; COMPOSITION: PRECDURE. In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

"(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding. * * *

"(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application. * * *" (28 USC, Section 2284, Page 4411, 1952 Edition.)

to determine the constitutional question

"NO PERSON SHALL * * * BE DEPRIVED * * * OF PROPERTY, WITHOUT DUE PROCESS OF LAW."

under the Fifth Amendment of the Constitution of the United States raised in Movants' Third Amended Complaint and Amendment to Third Amended Complaint in Action No. 3216 in the United States District Court for the Western District of Kentucky, styled: Robert Hubbard and Lavinia Hubbard, his wife, against William M. Gray, District Director of In-

ternal Revenue, Louisville, Kentucky, and the United States of America (See Ex Parte—In the Matter of the Metropolitan Water Company of West Va., Petitioner, 220 U. S. 539, 31 S. Ct. 600, 55 L. Ed. 575; Mosher v. City of Phoenix, 287 U. S. 29, 53 S. Ct. 67, 77 L. Ed. 148; Ex Parte Cogdell, *et al.*, 342 U. S. 163, 72 S. Ct. 196, 96 L. Ed. 181); so that the Plaintiffs, or Defendants, in the aforesaid Action No. 3216, may appeal direct to this Court under

> "DIRECT APPEALS FROM DECISIONS OF THREE-JUDGE COURTS.
>
> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a District Court of three judges." (See 28 USC, Section 1253, Page 4181—1952 Edition);

and Movants most earnestly and respectfully request this Honorable Court to carefully read and consider their Petition (not withstanding it is possibly very long) and to grant this Motion and to grant their Petition.

ROBERT HUBBARD
LAVINIA HUBBARD
Movants.